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In the Supreme Court of the United States

OCTOBER TERM, 1990

LABORERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA, PETITIONER

v.

MARION J. IMEL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Northern California construction industry, as defined by pertinent collective bargaining agreements and a multi-enterprise pension plan, can be considered a veteran's employer under the Veterans' Reemployment Rights Act, 38 U.S.C. 2021, so that the veteran's departure for the military from employment with one contractor in the industry and reemployment after military service with another such contractor created a right to pension credits for his period of military service.

2. Whether the district court possessed jurisdiction under 38 U.S.C. 2022 over a pension fund in this action by a veteran to secure pension credits to which he is entitled under the Veterans' Reemployment Rights Act.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	11
Conclusion	19

TABLE OF AUTHORITIES

Cases:

Akers v. *Arnett*, 748 F.2d 283 (5th Cir. 1984), aff'g 597 F. Supp. 557 (S.D. Tex. 1983) 15, 17

Alabama Power Co. v. *Davis*, 431 U.S. 581 (1977) .. 7, 11, 12, 14, 16

Anderson v. *Automotive Indus. Pension Trust Fund*, 108 L.R.R.M. (BNA) 3167 (N.D. Cal. 1981) 17

Bunnell v. *New England Teamsters & Trucking Indus. Pension Fund*, 655 F.2d 451 (1st Cir. 1981), cert. denied, 455 U.S. 908 (1982) 7, 17

Christner v. *Poudre Valley Coop. Ass'n*, 235 F.2d 946 (10th Cir. 1956), aff'g 134 F. Supp. 115 (D. Colo. 1955) 16

Coffy v. *Republic Steel Corp.*, 447 U.S. 191 (1980) .. 7, 14

Ebert v. *Poston*, 266 U.S. 548 (1925) 16

Fishgold v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946) 11, 14, 15

Grzyb v. *New River Co.*, 793 F.2d 590 (4th Cir. 1986) 17

Hannahs v. *New York State Teachers' Retirement Sys.*, 26 Fair Empl. Prac. Cas. (BNA) 527 (S.D.N.Y. 1981) 17

Probe v. *State Teachers' Retirement Sys.*, 27 Fair Empl. Prac. Cas. (BNA) 1306 (C.D. Cal. 1981), aff'd in part and rev'd in part, 780 F.2d 776 (9th Cir.), cert. denied, 476 U.S. 1170 (1986) 17

Shaw v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983) .. 18

Cases—Continued: Page

Smith v. *Industrial Employers & Distributors Ass'n*, 546 F.2d 314 (9th Cir. 1976), cert. denied, 431 U.S. 965 (1977) 7, 17
Spirt v. *Teachers Ins. & Annuity Ass'n*, 691 F.2d 1054 (2d Cir. 1982), vacated, 463 U.S. 1223 (1983), reinstated and modified, 735 F.2d 23 (2d Cir.), cert. denied, 469 U.S. 881 (1984) 17
TVA v. *Hill*, 437 U.S. 153 (1978) 15
Textile Workers Pension Fund v. *Standard Dye & Finishing Co.*, 725 F.2d 843 (2d Cir.), cert. denied, 467 U.S. 1259 (1984) 12
United States ex rel. Reilly v. *New England Teamsters & Trucking Indus. Pension Fund*, 737 F.2d 1274 (2d Cir. 1984) 17
Voliva v. *Seafarers Int'l Union*, 680 F. Supp. 216 (E.D. Va.), aff'd, 858 F.2d 195 (4th Cir. 1988) .. 17

Statutes:

Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* 3, 18
29 U.S.C. 1144(a) 18
29 U.S.C. 1144(d) 18
Labor-Management Relations Act, 1947, § 302(c)(5), 29 U.S.C. 186(c)(5) 3
Military Selective Service Act of 1967, 50 U.S.C. App. 459 (1970) 2
Selective Training & Service Act of 1940, ch. 720, § 8(b), 54 Stat. 890 2
Vietnam Era Veterans' Readjustment Assistance Act of 1974, Tit. IV, 38 U.S.C. 2021 *et seq.* (Veterans' Reemployment Rights Act):
38 U.S.C. 2021 ..... 2, 11, 14
38 U.S.C. 2021(a) 2, 8
38 U.S.C. 2021(a)(B)(ii) 10
38 U.S.C. 2021(b)(1) 2, 11
38 U.S.C. 2021(b)(2) 2
38 U.S.C. 2022 ..... 3, 6, 7, 9, 11, 16

Miscellaneous:

H.R. Rep. No. 869, 96th Cong., 2d Sess. (1980) 12

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 894 F.2d 1327. The opinion of the district court (Pet. App. B1-B17) is unpublished, but is unofficially reported at 10 Employee Benefits Cas. (BNA) 1819.

JURISDICTION

The judgment of the court of appeals was entered on May 22, 1990. The petition for a writ of certiorari was filed on July 20, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In order to minimize disruption in the lives of those who enter military service, 38 U.S.C. 2021, commonly known as the Veterans' Reemployment Rights Act (VRRA or the Act), provides veterans returning to civilian employment with broad reemployment rights.[1] Section 2021(a) of the Act provides that a "person * * * who leaves a position (other than a temporary position) in the employ of any employer" to enter the military, who satisfactorily completes military service, and who "makes application for reemployment within ninety days after" discharge, shall "be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay * * * unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so." The statute commands that a returning veteran be restored "without loss of seniority." 38 U.S.C. 2021(b)(1). It further provides that "any person who is restored to * * * a position in accordance with the [Act] should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of * * * entering the Armed Forces until [his or her] * * * restoration to * * * employment." 38 U.S.C. 2021(b)(2). In the event

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[1] The veterans' reemployment rights provisions were first enacted as part of the Selective Training and Service Act of 1940, ch. 720, § 8(b), 54 Stat. 890. See Pet. App. A5 n.1. The provisions were reenacted, with amendments, in the Military Selective Service Act of 1967, 50 U.S.C. App. 459 (1970), and again in the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 2021 *et seq.* See Pet. App. A5 n.1.

that "any employer * * * refuses to comply with the[se] provisions," a federal district court has jurisdiction over an action by the returning veteran "to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered." 38 U.S.C. 2022.[2]

2. Petitioner Laborers Pension Trust Fund for Northern California (the Fund) is a joint labor-management pension fund, maintained pursuant to Section 302(c)(5) of the Labor-Management Relations Act, 1947, 29 U.S.C. 186(c)(5), and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* Pet. App. B2. The Fund was established and is maintained under collective bargaining agreements between two chapters of the Associated General Contractors of America, Inc., and the Northern California District Council of Laborers, Hod Carriers, Building and Construction Laborers of the International Hod Carriers, Building and Common Laborers Union of America. Pet. App. A6, B2. Respondent Marion Imel is a retired laborer who, except for two years in military service, worked in the construction industry in Northern California from 1951 until his retirement in 1979.[3] Pet. App. A6, B5-B6. Asserting his rights under the Veterans' Reemployment Rights Act, Imel requested that in calculating his retirement benefits, the Fund provide him with service credit for his two years of military service during the Korean War. The Fund denied his request. Pet. App. B7.

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[2] As authorized by this provision, attorneys for the United States have represented the respondent in this action.

[3] As used herein, the construction industry in Northern California refers to the industry as defined by the relevant collective agreements and by the pension plan.

a. Imel began work in the construction industry in Northern California in June 1951, when he joined the Laborers' Union. Pet. App. B5. The union maintained a de facto mandatory hiring hall, through which it dispatched workers to contractors in the industry. Pet. App. A7, B12.[4] On the day after he joined, Local Union 185 dispatched him to Utah Construction Co. as a laborer. Pet. App. B5. When he was laid off two weeks later, he returned to the union hall, and shortly thereafter obtained a dispatch from the union to another contractor. *Ibid.* In this manner, *i.e.*, through dispatches from the union hall, Imel obtained various jobs (generally of two to four months' duration) until March 1953 when, while working for Tarlton Construction Co., he was drafted into the military. *Ibid.*

On March 4, 1955, after two years of military service during the Korean War, Imel was honorably discharged. Pet. App. B5. Within a few days, he reported to the Laborers' hiring hall where he was reinstated as a regular dues-paying member and was put on the out of work list. Pet. App. B6. In April 1955, he obtained a dispatch from the hiring hall to Utah, Bates and Rogers Co. for a job on a dam-related construction job. *Ibid.*[5] Thereafter, until his retirement in 1979, Imel continued to work as a laborer in the construction industry in Northern California, seeking and obtaining all work through dispatch by the union hall. Pet. App. B6.

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[4] The existence of a union hiring hall was a disputed factual issue at trial. The district court found that a hiring hall existed and that it was mandatory for workers seeking referrals for laborers' jobs with contractors in the industry to go through that hiring hall. Pet. App. B10-B12.

[5] The petition (Pet. 7) incorrectly gives this date as April 1985.

b. The pension plan administered by petitioner was established in 1963 and exists so that "laborers who have given long years of service to the construction industry in Northern California will be able to retire with a measure of financial security." PX 17a, at 1. The focus of the pension plan's service credit provisions is on service to the industry as a whole—as represented by contractors covered by the collective bargaining agreements and by petitioner—rather than on service to any particular contractor. Under the plan, a minimum amount of credited service in the industry is required to qualify for a pension, and the amount of such credit also determines the amount of monthly pension benefits a retiree will receive. Pet. App. B2-B3. Simply put, the plan provides a full year of service credit for 1,000 hours of employment in a plan year (or if less than 1,000 hours, credit in quarter-year increments for each 250 hours worked). Pet. App. B3. Hours worked for any covered contractor are included in the computation, regardless of the duration of a specific job. Pet. App. A6.[6]

Under the pension plan as established, and continuing until 1976, military service was not considered

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[6] The Fund distinguishes between two types of service credit: past service credit and future service credit. Past service credit is given for work in the construction industry before August 1, 1962, the date on which participating contractors began contributing to the Fund. Pet. App. A13, B3. Imel's employment both with Tarlton Construction Co., the contractor for whom he worked immediately before military service, and with Utah, Bates and Rogers Co., the contractor for whom he worked immediately after military service, qualified as "past service" under the Plan. Credit for work performed after August 1, 1962, is considered future service credit. Pet. App. B3. The Fund uses the hourly credit formula described above for both past and future service credit. Pet. App. B3.

a break in service, but was not credited toward vesting or calculation of the pension benefit. PX 17a, Art. IV, Sec. 7, at 27. In 1977, in response to a veteran's claim that the VRRA required the Fund to provide him with credit for his military service, the Fund's trustees amended the plan, retroactive to June 1, 1976, to incorporate a new Section 6.02a governing credit for military service. Pet. App. A6. That section provides that a returning veteran will receive pension credit for his period of military service if he "was employed in a permanent position * * * immediately prior to such military service and was reemployed by the employer for whom he was working immediately prior to his entry into such military service." *Ibid.*

When Imel retired in January 1979, the Fund credited him with 25-1/4 years of service. Joint Stip. of Facts (Stip.) para. 12. That total included his hours worked with various contractors in the industry between June 1951 and March 1953 and between March 1955 and January 1979, but excluded his intervening period of military service. Stip. paras. 12, 13. The Board of Trustees denied his request for military service credit on the authority of Section 6.02a of the Plan because after his military service Imel was employed by a different contractor from the one for whom he had worked immediately before his service. Pet. App. B8. The Board also denied that the credit was required by the VRRA. *Ibid.* Imel then instituted this action against the Fund in federal district court pursuant to 38 U.S.C. 2022, seeking pension credit for his military service as required by the VRRA.

3. The district court ruled that the Fund violated the VRRA by denying Imel pension credits for his

military service. Pet. App. B1-B17. The court first rejected the Fund's jurisdictional challenge, holding that under *Smith* v. *Industrial Employers & Distributors Ass'n*, 546 F.2d 314 (9th Cir. 1976), cert. denied, 431 U.S. 965 (1977), and *Bunnell* v. *New England Teamsters & Trucking Indus. Pension Fund*, 655 F.2d 451 (1st Cir. 1981), cert. denied, 455 U.S. 908 (1982), the court possessed jurisdiction under 38 U.S.C. 2022 over a suit against a pension fund even though the "fund is not the employer." Pet. App. B6-B7.

Proceeding to the merits of the VRRA claim, the district court held that the pension benefit in question was a "perquisite of seniority" under *Coffy* v. *Republic Steel Corp.*, 447 U.S. 191 (1980), and *Alabama Power Co.* v. *Davis*, 431 U.S. 581 (1977), and thus that an employer must credit military service in calculating Imel's benefit. Pet. App. B13.[7] This holding followed from two subsidiary conclusions: the benefit is one that rewards employees for length of service rather than one that provides short-term compensation; and it was reasonably certain that Imel would have accrued the benefit had he not been inducted. Pet. App. B9-B10.[8]

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[7] The court also held that the question of adherence to the plan's terms is irrelevant to this VRRA action. Pet. App. B7-B8. The court noted that it is the plan's compliance with the VRRA that is at issue and that "whatever a multi-employer bargaining unit and a union may agree to, they cannot agree to alter what the Congress has required by statute as non-negotiable." Pet. App. B8.

[8] The court found that a de facto hiring hall existed in the Northern California construction industry during the years in question and that "[u]se of that practice essentially guaranteed that as long as plaintiff sought work by registering at

The court next held that Imel was in an "other than temporary position," as required by 38 U.S.C. 2021 (a), before he was inducted into the military. Pet. App. B13. The court ruled that, under the circumstances of this case, the focus of its analysis must be on the industry covered by the pension fund, and not on the specific contractor whose short-term project provided Imel's last pre-service work experience. Pet. App. B13-B17. The court based this determination on the very nature of multi-enterprise plans, whose purpose is "to assure a stable workforce by providing workers the type of pension vesting and protection that would be available from a single long term employer." Pet. App. B13. Indeed, the court noted that a contrary interpretation "as a practical mater [*sic*] would deny military credit for virtually any employee in the construction industry," given the short-term nature of such jobs. Pet. App. B16.

Similarly, the district court held that Imel reapplied and was reemployed by his "employer" after military discharge when he went to the hiring hall—"the appropriate location to make application for reemployment"—and was dispatched to a contractor covered by the Fund. Pet. App. B10. Therefore, the court held that the VRRA required the Fund to grant Imel pension credit for his military service, and ordered the Fund to award him past due benefits (plus prejudgment interest) and future monthly benefits that include credit for his two years of service. Pet. App. B17.[9]

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the union hall he would be dispatched to jobs covered by the pension plan." Pet. App. B10.

[9] With the credit for his military service, Imel's monthly pension benefit is increased $65/month, from $825 to $890/month. Pet. App. B1 n.1.

4. A divided panel of the court of appeals affirmed. Pet. App. A1-A16. The court held that the district court possessed jurisdiction over the Fund under 38 U.S.C. 2022.[10] The court rejected the Fund's position that a narrow construction of the term "employer" as used in the Act was appropriate, holding instead that the term should be liberally construed in light of the statute's purpose of insuring that a veteran is not penalized because of his military service. Pet. App. A9. The court noted that in actions under Section 2022, several other courts had asserted jurisdiction over a pension fund, Pet. App. A9, and it was unnecessary for individual contractors to be joined in such a suit. Pet. App. A12. It added that the Fund was the only party with a significant interest in the proceeding and it was the party that would provide relief. *Ibid.*

As to the merits of Imel's VRRA claim, the court rejected the Fund's argument that Imel would be entitled to pension credits only if after his military service he had returned to the same contractor for whom he had worked before military duty. Pet. App. A12-A13. The court of appeals agreed with the district court that the "focus [is] on the industry as an employing unit" and that Imel appropriately returned for employment to the union hiring hall, the same entity through which he had regularly secured employment in the industry before he went into the service. *Ibid.* The court noted that its conclusion was consistent with the pension plan itself, since the plan rewards an employee according to his length of serv-

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[10] In addressing the scope of its review of the district court's decision, the Court rejected the Fund's argument that the district court should have deferred to the trustees' decision to deny Imel pension credit. Pet. App. A8. The majority held that it was for the courts to determine whether the requirements of the VRRA had been met. *Ibid.*

ice within the industry as a whole and not according to his service with any single contractor. Pet. App. A13. The court also concluded that Section 2021(a)(B)(ii), which provides that successors in interest must afford a veteran the same rights as their predecessors, supports a broad functional approach to the concept of employer; here, "the multi-employer group is made up of changing employer members" and it is the "multi-employer group [that] is a consistent entity." Pet. App. A13.[11]

Finally, the court held that Imel occupied an "other than * * * temporary" position when he entered military service. Pet. App. A14. Although Imel's position with any given contractor had been short term, the court of appeals upheld the lower court's finding that respondent had a reasonable expectation when he entered military service that he would continue in employment with the industry as a laborer. Pet. App. A15. Therefore, the majority ruled, Imel was entitled to the protections of the statute and the district court properly ordered the Fund to give him pension credit for his years of military service and to adjust his pension benefit accordingly.

Judge Trott dissented, stating that the court had stretched the term "employer" beyond all recognition in order "to achieve a desirable result." Pet. App. A15-A16. He acknowledged that the court's ruling might be justified as a matter of policy, but believed that it is for Congress to decide whether VRRA protections should extend to Imel and similarly situated veterans. Pet. App. A16.

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[11] The court also rejected petitioner's "economic argument" that liability should not be imposed upon it because of the cost associated with giving pension credits to Imel and similarly situated returning veterans. Pet. App. A13-A14.

ARGUMENT

1. In this case, a laborer was employed in an industry (the Northern California construction industry) whose employees used a mandatory union hiring hall and were covered by a single pension plan. The laborer went into the service, and upon discharge, promptly sought reemployment in that industry through the same hiring hall. Under these circumstances, the courts below correctly held that the laborer is entitled to the rights guaranteed by Section 2021 of the VRRA. (Indeed, if he were not, the Act would afford little or no protection in this or similar industries.) Moreover, the courts below also correctly held that Section 2022 of the Act provides jurisdiction over petitioner in an action by the veteran to enforce those rights.

a. Contrary to the Fund's argument (Pet. 12-14), the court of appeals' ruling providing service credit to Imel effectuates Congress's intent. The VRRA is designed "to minimize the disruption in individuals' lives resulting from the national need for military personnel" (*Alabama Power Co.* v. *Davis*, 431 U.S. at 583) and to insure that "[h]e who was called to the colors was not to be penalized on his return by reason of his absence from his civilian job." *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284 (1946). Section 2021 of the statute provides a veteran with a right to reemployment, as well as restoration of the "perquisite[s] of seniority" that would have accrued during the period of military service, including the pension benefits at issue here. See *Alabama Power Co.* v. *Davis*, 431 U.S. at 589.[12] In this

[12] The statute also provides (38 U.S.C. 2021(b)(1)) that a reinstated veteran "shall be entitled to participate in insurance or other benefits offered by the employer pursuant

case, the district court expressly found that Imel would have accrued pension credit under the pension plan during the period of his military service had he not been inducted. See Pet. App. B9-B10.

By focusing on the "industry as the employment unit" (Pet. App. A13), the court of appeals clearly achieved the statutory purpose by providing the returning veteran with a "perquisite of seniority" that he would have accrued but for his military service. The holding also is based on a careful consideration of the distinctive characteristics of this employment system. First, as the court of appeals explained (Pet. App. A13), the Fund itself treats the industry as a whole as the employer. Indeed, the very purpose of a pension fund like petitioner is to assure that the frequent lay-offs resulting from jobs of short duration do not compromise employee vesting rights. See Pet. App. B13-B16; *Textile Workers Pension Fund* v. *Standard Dye & Finishing Co.*, 725 F.2d 843, 847 (2d Cir.), cert. denied, 467 U.S. 1259 (1984); H.R. Rep. No. 869, 96th Cong., 2d Sess. 52-53 (1980) (Multiemployer Pension Plan Amendments Act). Petitioner's pension plan implements that goal by counting work with any covered contractor toward the minimum number of hours needed for a year of

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to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces." That portion of the statute, however, refers to benefits that are not considered to be a "perquisite of seniority," such as vacation benefits. See generally *Alabama Power Co.* v. *Davis*, 431 U.S. at 588-589. As to benefits that are a "perquisite of seniority," like the pension benefit at issue here, the reinstated veteran must be accorded the level of benefits he would have accrued had he been continuously employed during his period of military service.

pension credit, without regard to the duration of a specific job with a contractor. The Fund also does not treat military service as a break in service even though it interrupts employment with two different contractors. Indeed, it speaks of providing benefits for workers who are "retiring from the Building and Construction Industry in Northern California." PX 17a, at 3.

Second, the existence of the union hiring hall strongly supports the ruling that Imel was a permanent employee of the industry as a whole, and undercuts the Fund's position that the focus must be on the specific contractor. Use of the hiring hall provided Imel with regular, continuous employment in the industry, notwithstanding that his relationship with any particular contractor was short term. See Pet. App. A13 (noting that in this employment setting, it is the "multi-employer group [that] is a consistent entity"); see also Pet. App. B10. By the same token, it provided individual contractors that might not have been able to maintain a permanent work force with a steady supply of employees. Because of the stability that the hall created, an employee who enters military service from this sort of system gives up a period of regular employment just as surely as does an employee who works for a single enterprise.

In light of the way in which this employment system operated, therefore, the lower courts correctly rejected the Fund's argument that Imel would have been entitled to pension credit under the Act only if his post-service hiring hall referral had been to the same contractor to whom he had been referred immediately before his service. That argument, which properly concedes that the VRRA applies in this set-

ting,[13] would lead to the result that only those workers who happen to be reassigned to the same contractor after military service earn pension credit for their years of military service. Congress did not intend to establish a scheme that would have such fortuitous and arbitrary application.

Contrary to the Fund's contention, the term "employer" as used in the statute is not limited in this context to individual contractors. This employment setting defies such easy characterization: the union refers workers for employment, the contractors pay and supervise workers, and the pension fund, to which all the contractors contribute, provides a highly significant employment benefit. And, as the court of appeals held, the Fund's position—that Congress intended to exclude veterans from VRRA protections unless after service they happen to be sent back to the same contractor—cannot be squared with this Court's repeated admonitions that Congress intended the Act to be liberally construed in favor of veterans. *Coffy* v. *Republic Steel Corp.*, 447 U.S. 191, 196 (1980); *Alabama Power Co.* v. *Davis*, 431 U.S. at 584; *Fishgold*, 328 U.S. at 285 (courts should "construe the separate provisions of the Act as parts of an organic whole and give each as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permit"). In determining that the contractors as a group constituted "the employing unit" (Pet. App. A13) for purposes of Section 2021, the court of appeals properly followed that principle.

There is no conflict between this sensible holding of the court of appeals and any decision of this Court

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[13] There might be a question in a particular instance whether the position held before entering the service was "other than * * * temporary" within the meaning of Section 2021.

or any other court of appeals. The question whether the VRRA accords pension rights to an employee like Imel basically is one of first impression.[14] None of the decisions cited by the Fund (Pet. 12-13, 17) involved either the interpretation of the term "employer" as used in the Act or the Act's application in an analogous setting.[15]

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[14] In a factual setting very similar to this case, the Fifth Circuit upheld a district court's order requiring the trustees of a maritime association-longshoremen's union pension fund to provide pension credits to a veteran for his period of military service. *Akers* v. *Arnett*, 748 F.2d 283 (1984) (per curiam), aff'g 597 F. Supp. 557 (S.D. Tex. 1983). In that case, the veteran was a longshoreman who secured work through a hiring hall on a daily basis and who, before his military service, had worked only 349 hours for various stevedoring companies. 597 F. Supp. at 558-559. After military service, he returned to work in the maritime industry through the hiring hall and later sought a pension based on his combined years of employment and military service. *Id.* at 559. The court held that the plaintiff was "an 'other than temporary' employee" entitled to the Act's protection because he reasonably could have expected to have worked more than 400 hours a year (the minimal number of hours for pension accrual) had he not been inducted. *Id.* at 561-562. Although the court did not expressly state that the maritime industry covered by the hiring hall was the employing entity, the court appeared to recognize as much when it determined, without drawing distinctions among the various stevedoring companies for which plaintiff had worked, that his employment was not temporary in nature. But the court did not specifically address the argument made by petitioner here.

[15] See *TVA* v. *Hill*, 437 U.S. 153 (1978) (Endangered Species Act of 1973 prohibits construction or operation of a dam that would jeopardize existence of an endangered species); *Fishgold* v. *Sullivan Drydock & Repair Corp.*, *supra* (provision in Selective Training and Service Act of 1940 that veteran may not be discharged without cause for one year after reinstatement does not insulate veteran from

b. The court of appeals also correctly ruled that Section 2022 of the Act permitted the assertion of jurisdiction over the Fund. In an argument closely related to its merits argument, the Fund briefly maintains (Pet. 14) that the term "employer" as used in the Act's jurisdictional provision cannot be construed to include a pension fund. Yet as the court of appeals emphasized (Pet. App. A11-A12), the Fund is the only party with a significant interest in this proceeding and the only party that can provide any relief. Indeed, the plan provides that "no Individual Employer has any liability, directly or indirectly, to provide the benefits established by this Plan." Pet. App. A12. For these reasons, a narrow construction of the term "employer" would undermine the Act's purpose to provide pension protection to veterans. See *Alabama Power Co.* v. *Davis*, 431 U.S. at 584. It is wholly appropriate to view the Fund, in these circumstances, as the responsible representative of the employment unit. Moreover, as the court of appeals noted, several courts have asserted jurisdiction over a pension fund (or its trustees) as a defendant in VRRA actions, and no court has refused

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layoff so long as he has been accorded the seniority he would have accrued during military service); *Ebert* v. *Poston*, 266 U.S. 548 (1925) (Soldiers' and Sailors' Civil Relief Act of Mar. 8, 1918, did not apply to mortgage foreclosures that took place before the passage of the Act or before the military service of the owner of the mortgaged property); *Christner* v. *Poudre Valley Coop. Ass'n*, 235 F.2d 946 (10th Cir. 1956), aff'g 134 F. Supp. 115 (D. Colo. 1955) (Universal Military Training and Service Act did not provide for federal court jurisdiction over actions seeking to enforce reemployment rights granted by Section 459(g)(3) of the Act to persons who left civilian employment to enter the Armed Forces, but who were rejected; such actions must be brought in state court).

to do so. See, *e.g.*, *Grzyb* v. *New River Co.*, 793 F.2d 590 (4th Cir. 1986); *United States ex rel. Reilly* v. *New England Teamsters & Trucking Indus. Pension Fund*, 737 F.2d 1274 (2d Cir. 1984); *Akers* v. *Arnett*, 748 F.2d 283 (5th Cir. 1984); *Bunnell* v. *New England Teamsters & Trucking Indus. Pension Fund*, 655 F.2d 451 (1st Cir. 1981), cert. denied, 455 U.S. 908 (1982); *Smith* v. *Industrial Employers & Distributors Ass'n*, 546 F.2d 314, 317 (9th Cir. 1976), cert. denied, 337 U.S. 939 (1977); *Voliva* v. *Seafarers Int'l Union*, 680 F. Supp. 216 (E.D. Va.), aff'd, 858 F.2d 195 (4th Cir. 1988); *Anderson* v. *Automotive Indus. Pension Trust Fund*, 108 L.R.R.M. (BNA) 3167 (N.D. Cal. 1981).[16]

2. Petitioner asserts (Pet. 18) that the holding below is "in direct conflict with the policy underlying

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[16] Courts have also determined that pension funds covering employees of various individual enterprises are appropriately considered "employers" for purposes of statutes outlawing employment discrimination. See *Spirt* v. *Teachers Ins. & Annuity Ass'n*, 691 F.2d 1054, 1063 (2d Cir. 1982) ("We agree with the district judge that TIAA and CREF, which exist solely for the purpose of enabling universities to delegate their responsibility to provide retirement benefits for their employees, are so closely intertwined with those universities * * * that they must be deemed an 'employer' for purposes of Title VII."), vacated, 463 U.S. 1223 (1983), reinstated with modification of relief award, 735 F.2d 23 (2d Cir.), cert. denied, 469 U.S. 881 (1984); *Probe* v. *State Teachers' Retirement Sys.*, 27 Fair Empl. Prac. Cas. (BNA) 1306, 1310 (C.D. Cal. 1981), aff'd in part and rev'd in part on other grounds, 780 F.2d 776 (9th Cir.), cert. denied, 476 U.S. 1170 (1986) (Under Title VII and Fair Labor Standards Act, California Teachers' Retirement Board and State Teachers' Retirement System are 'employers' of teachers employed in various local school districts); *Hannahs* v. *New York State Teachers' Retirement Sys.*, 26 Fair Empl. Prac. Cas. (BNA) 527, 532 (S.D.N.Y. 1981).

enactment of the Employee Retirement Income Security Act," 29 U.S.C. 1001 *et seq.* Although the financial burden imposed on the Fund as a result of the relief ordered in this case is small (see note 7, *supra*), petitioner contends (Pet. App. B15-B16, B18) that the decision below will impose a substantial financial burden "of an undetermined amount" on the Fund and contributing employers and thus conflicts with ERISA's goal of encouraging the continuation and maintenance of voluntary private pension plans. In our view, it is an exaggeration to suggest (Pet. 15) that this decision "might well lead to withdrawals from participation in the Fund." As petitioner acknowledges (*ibid.*), any pension plan entails costs to the employer, and it is highly unlikely that any incremental increases in costs resulting from this decision will force employers to withdraw from the Fund.

In any event, while ERISA generally preempts *state* laws that relate to employee benefit plans (29 U.S.C. 1144(a)), it specifically saves other *federal* laws like the VRRA (29 U.S.C. 1144(d)). See generally *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 91 (1983). Thus, there is nothing in ERISA—a statute designed to protect employees' retirement income—that purports to repeal the protections of the VRRA or to immunize funds against actions for noncompliance with the VRRA. Accordingly, there is no tension between ERISA and the court of appeals' observation (Pet. App. A14) that any increased financial burden on the Northern California construction industry is compelled by Congress's command that veterans be reinstated with full seniority rights, including pension benefits that are "perquisites of seniority."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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